

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 24th day of August, Two thousand and six.

PRESENT:

HON. GUIDO CALABRESI,
HON. SONIA SOTOMAYOR,
HON. RICHARD C. WESLEY,
Circuit Judges.

Nehat Selami,
_____*Petitioner,*

-v.-

Alberto R. Gonzales, Attorney General,
_____*Respondent.*

No. 06-0298-ag
NAC
A78-960-081

FOR PETITIONER: Oleh R. Tustaniwsky, New York, New York.

FOR RESPONDENT: Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois; Edmond E. Chang, T. Markus Funk; Craig A. Oswald, Assistant United States Attorneys, Chicago, Illinois.

UPON DUE CONSIDERATION of this petition for review of the Board of Immigration Appeals ("BIA") decision, it is hereby ORDERED, ADJUDGED, AND DECREED that the

1 petition for review is DENIED.

2 Petitioner Nehat Selami, a native and citizen of Albania, seeks review of a December 27,
3 2005 order of the BIA affirming the February 27, 2004 decision of Immigration Judge (“IJ”) Alan L. Page denying petitioner’s application for asylum, withholding of removal, and relief
4 under the Convention Against Torture. *In re Nehat Selami*, No. A 78 960 081 (B.I.A. Dec. 27,
5 2005), *aff’g* No. A 78 960 081 (Immig. Ct. N.Y. City Feb. 27, 2004). We assume the parties’
6 familiarity with the underlying facts and procedural history in this case.
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8 When the BIA issues an opinion that fully adopts the IJ's decision, this Court reviews the
9 IJ's decision. *See, e.g., Chun Gao v. Gonzales*, 424 F.3d 122, 124 (2d Cir. 2005); *Secaيدا-*
10 *Rosales v. INS*, 331 F.3d 297, 305 (2d Cir. 2003). This Court reviews the agency's factual
11 findings, including adverse credibility determinations, under the substantial evidence standard.

12 The IJ’s adverse credibility determination was based on substantial and material
13 inconsistencies and omissions in the record. For instance, the record supports the IJ’s finding
14 that Selami’s testimony was “very general.” Selami testified that the police came to his home
15 several times looking for him and his family members. When the IJ probed for details on when
16 these searches occurred and how he learned about them, Selami merely responded, “[t]ime after
17 time.” When asked for a specific month or year, Selami stated, “[m]onth after month. They
18 would come one month and they’ll come after that month another month.” The record also
19 reflects that when the IJ asked Selami when he was beaten and mistreated during 1991, 1992, and
20 1997, Selami clearly failed to provide specific dates. Because the IJ probed for further details
21 which Selami was unable to provide, the IJ appropriately relied on the generalities of Selami’s
22 testimony to support his adverse credibility ruling. *See Jin Shui Qiu v. Ashcroft*, 329 F.3d 140,

1 152 (2d Cir. 2003).

2 In addition, the IJ accurately observed that Selami initially testified that after he was
3 arrested and beaten by the police during a demonstration regarding the assassination of the
4 Democratic Party leader, he was hospitalized in June 1998, but then stated that he was
5 hospitalized in September 1998. This inconsistency was both material and substantial to his
6 claim, particularly given that it was the focal point of his written asylum application, he
7 continually referred to this incident during his hearing, and he stated twice that the
8 hospitalization occurred in June, before testifying that it occurred in September. *See Secaida-*
9 *Rosales*, 331 F.3d at 308. Moreover, the IJ accurately observed that Selami indicated in his
10 affidavit that his family's life was in danger from the Communists or Socialists, however, he
11 conceded that some family members still lived in the same village in Albania and they do so
12 without fear. This material discrepancy undermined the credibility of Selami's claim that "[i]t
13 was the goal of the party in power after '97 to persecute [him] [and his] family." *Id.*

14 Further, the IJ supported his adverse credibility ruling with several claims that he
15 considered implausible. The IJ reasonably found it implausible that Albanian border control
16 officers would permit Selami to depart and return to Albania each time he traveled to Greece if
17 the police "were constantly looking for him." The IJ accurately noted that Selami was never
18 stopped and never had any problems, despite repeated trips between relatively small countries.
19 Likewise, the IJ reasonably found it implausible that Selami hid in the mountains as he testified.
20 The IJ also found it was implausible that the chief of police in Selami's town would issue his
21 father a certificate stating that Selami was "persecuted during the communist regime," despite his
22 explanation that the police were not looking for his father. It was reasonable for the IJ to find

1 that, absent further explanation, these claims were implausible. *See Ming Xia Chen v. BIA*, 435
2 F.3d 141, 146 (2d Cir. 2006).

3 The IJ additionally properly relied on an inconsistency between Selami's Democratic
4 Party membership card and letter from the Democratic Party, Diber Branch, to support his
5 adverse credibility ruling. The IJ accurately observed that Selami's membership card indicates
6 that he became a member of the Democratic Party in 1994, while the letter indicates that he
7 became a member in 1995, and Selami was unable to explain the discrepancy.

8 Although we have identified errors in the IJ's adverse credibility determination, remand
9 would be futile in this case because the IJ's determination is also supported by non-erroneous
10 findings and we can confidently predict that those non-erroneous findings would lead the
11 decision maker to reach the same decision were the case remanded. *See Xiao Ji Chen v. U.S.*
12 *Dep't of Justice*, 434 F.3d 144, 161-62 (2d Cir. 2006). Given that the only evidence of a threat to
13 Selami's life or freedom depended upon his credibility, the adverse credibility determination in
14 this case necessarily precludes success on his claim for withholding of removal and relief under
15 the CAT. *See Paul v. Gonzales*, 444 F.3d 148, 156 (2d Cir. 2006); *Xue Hong Yang v. U.S. Dep't*
16 *of Justice*, 426 F.3d 520, 523 (2d Cir. 2005); *cf. Ramsameachire v. Ashcroft*, 357 F.3d 169, 184
17 (2d Cir. 2004); *Wu Biao Chen v. INS*, 344 F.3d 272, 275 (2d Cir. 2003).

18 For the foregoing reasons, the petition for review is DENIED. Having completed our
19 review, any stay of removal that the Court previously granted in this petition is VACATED, and
20 any pending motion for a stay of removal in this petition is DENIED as moot. Any pending
21 request for oral argument in this petition is DENIED in accordance with Federal Rule of
22 Appellate Procedure 34(a)(2), and Second Circuit Local Rule 34(d)(1).

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FOR THE COURT:
Roseann B. MacKechnie, Clerk

By: _____